

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JENNIFER S.,

Plaintiff,

V.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. C23-144-BAT

ORDER REVERSING AND REMANDING

Plaintiff appeals the ALJ's decision finding her not disabled. She contends the ALJ misevaluated the medical evidence and her testimony, failed to develop the record, and made erroneous step five findings. Dkt. 15. For the reasons below, the Court **REVERSES** the Commissioner's final decision and **REMANDS** the matter for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

DISCUSSION

In February 2020, Plaintiff filed an application for supplemental security income, alleging disability beginning in 2003. Tr. 15. The ALJ found bipolar disorder, social anxiety disorder, posttraumatic stress disorder (PTSD), persistent depressive disorder, specific learning disorder, substance abuse disorder, diabetes with neuropathy, obesity, right knee osteoarthritis, degenerative disease of the cervical spine, osteoarthritis of the right shoulder, and asthma are

1 severe impairments; the impairments do not meet the Listings; Plaintiff has the residual
2 functional capacity (RFC) to perform light work with other physical, environmental and mental
3 health limitations; Plaintiff has no work history but is not disabled because she can perform other
4 jobs in the national economy. Tr. 18-29.

5 **A. Medical Opinions**

6 Plaintiff contends the ALJ miscalculated numerous medical opinions.

7 **1. *Christopher Portman, Ph.D. and Melanie Mitchell, Psy.D.***

8 The ALJ rejected Drs. Portman's and Mitchell's opinions that Plaintiff has severe
9 functional limitations on the grounds the opinions were not "well supported," do "not align with
10 the concepts and terms of the Social Security Act," offer a determination reserved to the
11 Commissioner, and assess functional limitations inconsistent with the record that showed largely
12 intact mental status. Tr. 27. Plaintiff contends, and the Court agrees, the ALJ erred in discounting
13 these opinions.

14 First, the ALJ's statement the opinions are not well supported is insufficient because this
15 is a conclusory statement and not a reviewable explanation supported by substantial evidence.
16 *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022) (holding an ALJ can "reject an examining or
17 treating doctor's opinion as unsupported or inconsistent" if the ALJ "provide[es] an explanation
18 supported by substantial evidence").

19 Next, the ALJ's finding the doctors' opinions are inconsistent with Plaintiff's medical
20 records is not supported by substantial evidence. In support of this finding, the ALJ cited to the
21 following records: a February 6, 2020, report indicating the clinician was meeting Plaintiff for
22 the first time, and Plaintiff was polite, cooperative, calm, had normal speech, anxious mood,
23 normal memory (noting this was not tested), clear thought process and judgment Tr. 2958; a June

1 9, 2021, record indicating Plaintiff was mildly anxious and depressed but engaged well, and her.
2 Tr. 2922; and a September 9, 2020, record indicating Plaintiff's behavior, judgment and thought
3 content is normal, but her mood is anxious, and her speech is tangential. Tr. 2647.

4 An ALJ may discount a medical opinion as inconsistent with the medical record, but the
5 few records the ALJ selected to reject the doctors' opinions do not fairly represent Plaintiff's
6 medical record. There are numerous medical records that tend to support the opinions of Drs.
7 Portman and Mitchell. *See e.g.*, Records from April 3, 2020 (anxiety makes it difficult for
8 Plaintiff to attend appointments; working on coping skills to reduce and regulate anxiety. Tr.
9 2956); April 17, 2023 (Discussed with Plaintiff processing anxiety due to Covid and how nobody
10 is wearing a mask or glove; reported anxiety and depressive symptoms. Tr. 2954); May 15, 2020
11 (Patient imagines everyone is cheating on her making her more hypervigilant. Tr. 2952); June 5,
12 2020 (Plaintiff was anxious with pressured speech and flight of ideas. Tr. 2950); June 19 ,2020
13 (Discussed crying a lot, neighbors coming over to help Plaintiff, and processing grief and
14 loneliness. Tr. 2948); April 13, 2020 (Processed grief and related trauma experiences. Tr. 2944-
15 456); October 27, 2020 (Feeling that breathing problems are caused by anxiety; Plaintiff is
16 lonely and depressed. Tr. 2940-41); January 20, 2021 (Depressed and tired. 2935); May 12, 2021
17 (Plaintiff reports been depressed Tr. 2926); June 9, 2021 (Mildly depressed and anxious Tr.
18 2922); September 20, 2021 (Plaintiff's confusion with appointment times is an ongoing problem.
19 Tr. 2920).

20 The ALJ also erred in rejecting the doctors' opinion as not aligning "with the concepts
21 and terms of the Social Security Act." The doctors' opinions were set forth in Washington State
22 Department of Social and Health Services (DSHS) psychological/psychiatric evaluation forms
23 that contain medical source statements listing severity ratings as to the ability to perform work

1 activities. The ALJ's rationale would preclude use of all Washington DSHS evaluations as these
2 evaluations use the same forms and use the same terms. This would be unreasonable given the
3 plain fact DSHS evaluations are contained in virtually every claimant's administrative record in
4 Washington State and are regularly considered by ALJ's as relevant evidence in determining
5 disability. The DSHS severity ratings may not use the exact language contained in the social
6 security act but that does not make the ratings irrelevant or subject to automatic discount. There
7 is nothing showing the severity ratings are so untethered to social security disability
8 determinations that they are unhelpful, or irrelevant and should be disregarded. Additionally, to
9 the extent the ALJ was unclear about what a moderate, marked, or severe functional limitation or
10 level of impairment meant, as used in the DSHS forms, the ALJ should have requested
11 clarification from the doctors rather than simply rejecting the opinions.

12 The ALJ also rejected the opinions as setting forth a determination reserved to the
13 Commissioner. The doctors did not simply opine Plaintiff was unable to work, which is a
14 determination reserved to the Commissioner. Rather they assessed the severity of Plaintiff's
15 functional limitations following a clinical examination which are medical opinions which should
16 be considered and assessed. The ALJ's finding the doctors determined disability, which is
17 reserved to the Commissioner, is accordingly not supported by substantial evidence.

18 **4. *Rebecca McClinton, MA, LMHC, Dana Harmon, Ph.D. and W. Douglas Uhl,
19 Psy.D.***

20 Plaintiff contends the ALJ failed to sufficiently address records and opinions generated
21 by Ms. McClinton and gave weight to the opinions of Drs Harmon and Uhl, even though they
22 predate the relevant time period. Because the ALJ erred in discounting the opinions of Drs.
23 Portman and Mitchell and must reassess these opinions, the ALJ must also necessarily reassess
the opinions of Ms. McClinton, and Drs. Harmon and Uhl, on remand.

1 **B. Plaintiff's Testimony**

2 The ALJ rejected Plaintiff's testimony about her pain and her mental health symptoms on
3 the grounds it was inconsistent with the record. Because the Court has found the ALJ erred in
4 discounting the opinions of Drs. Portman and Mitchell regarding Plaintiff's mental health
5 limitations, which necessarily affect the assessment of Plaintiff's testimony regarding these
6 symptoms, the ALJ shall on remand reassess Plaintiff's testimony about her mental health
7 symptoms.

8 The ALJ indicated reviewing doctors Gordon Hale, M.D., Renee Eisenhauer, Ph.D. noted
9 Plaintiff has severe impairments but that "there was insufficient evidence to evaluate the
10 claimant's functioning." Tr. 26. *See also* Tr. 104 ("Insufficient evidence physical."). Norman
11 Staley, M.D. and Jan L. Lewis, Ph.D. indicated a consultative examination (CE) was needed but
12 the ALJ did not order a CE. Dkt. 15 at 5, 7-8; *see also* Tr 126 ("is a CE(s) required? Yes.").

13 The ALJ should order a CE depending on the quality of existing medical opinions, and
14 whether an issue, such as what the record establishes is subject to dispute, and whether the issue
15 can be resolved by the ALJ without further medical opinions. *Reed v. Massanari*, 270 F.3d 838,
16 844 (9th Cir. 2001). Here the reviewing doctors indicated the record was insufficient to
17 determine disability and a CE was needed. *See* Tr 126 ("The additional evidence needed is not
18 contained in the records of the individual's medical sources."). The ALJ nonetheless found
19 Plaintiff not disabled and rejected her testimony about her physical symptoms as inconsistent
20 with the record but without obtaining a CE. The ALJ accordingly erred and shall reassess
21 Plaintiff's testimony and develop the record further on remand.

C. Drug and Alcohol Analysis and Step Five

Because this case must be remanded for further proceedings, the ALJ on remand shall address as appropriate any Drug and Alcohol issues, and any step five issues.

CONCLUSION

For the foregoing reasons, the Commissioner's decision is **REVERSED**, and this case is **REMANDED** for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

On remand, the ALJ shall reassess the opinions of Drs. Portman, Mitchell, Uhl and Harmon, reassess the opinions of Ms. McClinton and Plaintiff, develop the record to include ordering a CE and redetermine RFC as needed, and proceed to remaining steps as appropriate.

DATED this 26th day of September, 2023.


BRIAN A. TSUCHIDA
United States Magistrate Judge